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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.738 OF 2002

Harishchandra Vasudeo Vaity
aged about 42 years, residing at
r/o. Arnala Killa, Tal.Vasai
Dist.: Thane ... Appellant

V/s.

State of Maharashtra
(at the instance of Virar
Police Station)

2. Jagruti Jagdish Mhatre
at r/o. Arnala Killa,
Tal.: Vasai, Dist.:Thane ... Respondents

Mr.S.A. Velkar for Appellant
Mr.P.S. Hingorani, APP, for Respondent-State

CORAM: **V.G. PALSHIKAR &**
SMT.NISHITA MHATRE, JJ.

DATED: **OCTOBER 18, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. This is a horrendous case in which the accused has raped a five year old girl only to settle a score with the father of the girl. The innocent girl has become a hapless victim of the ire of the accused. Apparently, the provocation for this heinous act is political rivalry between the girl's father and the accused. This is a classic example of how vendetta and rage can bring out the beast in man.

2. The complainant, PW1 has stated in her deposition before the Court that on 25.10.1996, she had

left her house at 7 O'clock in the morning. When she returned at 6 O'clock in the evening she found the victim in the bathroom. The victim told her that she was suffering from pain in the abdomen. The complainant lifted her up and noticed blood stains on her underwear. The victim informed her that Deepa's father i.e., the accused called her to his house telling her that he would give her some fish. The victim told her that the accused was alone at home. This witness has disclosed that the victim told her that the accused closed the door, spread out the quilt and made her lie down on it. He removed her underwear and lay down on her. The victim then told her that the accused "had done bad thing with her". The complainant on examining the private parts of her daughter noticed a swelling and bleeding. When her husband returned home after fishing, she narrated the incident to her husband. Her mother in law also learnt of the incident and immediately thereafter accosted the accused. Her mother in law questioned the accused about his conduct with the victim, whereupon the accused assaulted her. A complaint was lodged by her with the Virar police station. Her daughter was referred for medical examination and then the next day she was examined by the doctor in the Civil Hospital, Thane. Her daughter was admitted in hospital for 10 days. The underwear of her daughter was seized by the police. The credibility

of this witness has not been shaken despite the searching crossexamination she was subjected to.

3. The victim has been examined as PW2. The victim was about 9 years old when her testimony was recorded in Court. She has deposed about the incident and the pain and suffering that she was subjected to. This witness has admitted that there were quarrels between her father and the accused and that she did not talk to the accused. She has also stated that her brothers never visited the house of the accused. She has spoken about the fact that she was alone when the accused enticed her into his house. She has denied the suggestion put to her in crossexamination that she had sustained an injury on her private parts when she fell on a hard and rough object.

4. The Doctor who examined PW2 has testified as PW6. The Medical Officer was attached to the Civil hospital, Thane. He examined her on 26.10.1996, i.e., the day after the incident. There were no external injuries on the girl. However, there were internal injuries on her private parts. He noticed slight bleeding from her vagina and lacerations on the vulva and hymen, with bleeding. The Doctor has then described the nature of examination that he conducted and the injuries which were sustained by the victim, internally.

Although the Doctor has admitted that the injury could have been caused by a hard and blunt object, he has stated that this object could even be the penis. He has denied the suggestion that the injuries noticed by him were possible due to a fall on the shrubs. All the necessary blood sample and the vaginal swabs were sent for analysis to the chemical analyser. The Doctor has refuted the suggestion that if a fully grown man raped a tiny girl his private parts would also be injured. The Doctor has also opined that the age of the injuries sustained by the victim was about 24 to 36 hours prior to the examination.

5. PW5 is the Doctor who examined the accused on 28.10.1996. On examination of the accused it was found that there was evidence of his having indulged in sexual intercourse within 72 hours of his examination. The Doctor has denied the suggestion that the accused was compelled to have sexual intercourse with his wife in his presence and in the presence of a constable in order to collect his semen sample. He has also stated that there was a likelihood of a minor girl becoming unconscious due to bleeding if she was raped. The medical evidence on record and the expert opinion of these two witnesses taken together with the ocular evidence on record proves, without doubt, that the accused was responsible for raping the victim. The

medical evidence on record corroborates the victim's account and therefore, we have no hesitation in accepting the case of the prosecution.

4. Furthermore, the seizure of the underwear of the victim and the quilt on which she was made to lie down has been proved by PW3 and PW4 respectively. These articles have been sent to the Chemical Analyser. The report from the Chemical Analyser shows that human blood stains were found on the underwear and the quilt. The group of the blood on the underwear was 'B' while the blood stains on the quilt could not be grouped. No semen was detected on any of the articles seized including the lungi worn by the accused.

5. The learned Counsel appearing for the accused submits that the prosecution case must fail as the grandmother of the child has not been examined although the complainant claimed that she had been assaulted by the accused when she questioned his behaviour. In our view, the evidence of the grandmother would not be material at all and the prosecution case could not have been advanced in any manner if she had been examined.

6. The next submission of the learned Counsel is that no semen was found at the spot where the incident occurred and therefore there was no rape. Such evidence

is not necessary to prove case of rape. The Explanation to section 375 of the Indian Penal Code provides that penetration is sufficient to constitute sexual intercourse necessary for the offence of rape. In our view, the wounds and injuries suffered by the victim as described by PW6, amply prove that there was penetration and therefore, the offence of rape has been established.

7. The learned Advocate then points out that if indeed the victim had been raped, there would have been profuse bleeding which would have resulted in her becoming unconscious. The medical evidence on record indicates that there is a likelihood of a minor girl who is raped becoming unconscious if there is bleeding. However, the medical expert has also opined that it is not necessary that in every case there would be such bleeding which would cause the victim to become unconscious. PW6, the Doctor who has examined the victim a day after the incident has noticed that the victim was bleeding internally from the lacerations suffered by her on and around the vulva and the hymen. Therefore, this submission of the learned Advocate cannot be accepted.

8. The learned Advocate then submits that there was no motive for the accused to have committed such a crime. He submits that it is because of the rivalry

between the victim's father and the accused that the victim had been used as a pawn by her father to malign the accused. This submission in our view, is unacceptable and without merit. Political rivalry or quarrels will not cause any father to use his child in such a way so as to leave her emotionally scarred for the rest of her life. In fact, if what the learned Advocate says is correct, that there was political rivalry between the two, it is not improbable that the accused has avenged himself by using the little girl as a pawn. No father, however hard hearted, would want his child to suffer the ignominy of having to live her life being known as a victim of rape, especially in our Indian society. Therefore, this submission of the learned Counsel must be rejected.

9. In our opinion, the prosecution has established and proved the circumstances leading to the inference that the accused has committed the offence for which he has been charged. The fact that the victim was lured by the accused to enter his house when nobody was present has been proved. The fact that the victim's underwear and the quilt where she was made to lie down were blood stained has also been proved. The medical evidence indicates that there was penetration. In the case of *Madan Gopal Kakkad v/s. Naval Dubey*, **(1992) 3 SCC 204**, the Supreme Court has held that even the slightest

penetration is sufficient to make out the offence of rape; the depth of penetration is irrelevant. The medical reports which are on record and the evidence of the medical officer who examined the victim on the day after the incident indicate that the victim had suffered injuries which proved that there was penetration. The act which the accused committed constitutes the offence of rape. The child was 5 and a half years old when this heinous crime was committed. The Sessions Court has in our view, rightly and justifiably convicted the accused and sentenced him to suffer rigorous imprisonment for life.

10. In the result, the appeal is dismissed.